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RECORD OF ORAL HEARING

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

*Ex parte* CHRISTOPHE BERTHAUD

Appeal 2009-015438  
Application 09/631,413  
Technology Center 2600

Oral Hearing Held: September 21, 2010

Before ROBERT E. NAPPI, KENNETH W. HAIRSTON and  
MAHSHID D. SAADAT, *Administrative Patent Judges*.

APPEARANCES:

ON BEHALF OF THE APPELLANT:

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1 The above-entitled matter came on for hearing on Tuesday, September  
2 21, 2010, commencing at 9:25 a.m., at the U.S. Patent and Trademark  
3 Office, 600 Dulany Street, Alexandria, Virginia, before Dawn A. Brown,  
4 Notary Public.

5 MR. SZIPL: Good morning.

6 THE USHER: Calendar Number 39, Appeal Number 2009-015438.

7 Mr. Szipl.

8 JUDGE NAPPI: Good morning, Mr. Szipl.

9 MR. SZIPL: Good morning.

10 JUDGE NAPPI: Am I pronouncing that right?

11 MR. SZIPL: Yes.

12 JUDGE NAPPI: If you have a copy of your business card, could you give it to  
13 the stenographer so she gets the spelling right and so this way she has your  
14 phone number in case she has to contact you?

15 MR. SZIPL: I'm afraid I don't have a copy of my card. I apologize. I'll leave  
16 my information.

17 JUDGE NAPPI: Okay. Easy enough. Just make sure you leave it with her  
18 after the hearing.

19 MR. SZIPL: Yes, I will.

20 JUDGE NAPPI: You have 20 minutes. You may begin when ready.

21 MR. SZIPL: Thank you. I just wanted to begin my presentation by saying  
22 that nothing in this argument or in our Brief should be construed as an  
23 admission that the Teres reference is prior art.

24 JUDGE NAPPI: Did you raise that issue in the Appeal Brief?

25 MR. SZIPL: We did not raise the issue in the Appeal Brief. But we believe  
26 that in a continuation application after this we could present evidence that

1 would remove Teres as prior art under 103(c). That is, we believe it was  
2 commonly known at the time the invention was made and that additional  
3 evidence would be able to remove it as a reference.

4 JUDGE NAPPI: That has been waived in this proceeding because it wasn't  
5 raised earlier before the Examiner. That issue has been waived as far as all  
6 proceedings here today.

7 MR. SZIPL: As far as proceedings here today, yes, I understand that.

8 JUDGE NAPPI: Okay.

9 MR. SZIPL: But I do believe that I can preserve the issue for a later  
10 prosecution in this case.

11 However, my purpose here today, since it was not raised in the Appeal Brief,  
12 is to argue that Teres is distinguishable from the present invention, and we  
13 believe we have sufficient arguments to demonstrate that today.

14 By way of introduction, there are four major embodiments in this case, and we  
15 believe that the issue -- the legal issues are simple. There is simply no prima  
16 facie case against any of these claims because significant claim limitations are  
17 not disclosed in any of the references. Therefore, even if the references were  
18 combined as suggested by the Examiner, the proposed combination of  
19 elements and teachings in the references were not -- would not produce the  
20 claimed device.

21 In the first embodiment with respect to Claim 1, a watch is claimed that has  
22 display means for time-related data and several means limitations. A first  
23 means for controlling movement of a cursor on a computer screen wherein the  
24 first means is formed of a plurality of touch-sensitive sensors, and each  
25 touch-sensitive sensor has a touch-sensitive pad that is at least partially  
26 transparent.

1 Touch-sensitive pads are supported so that the display means is at least  
2 partially visible through the touch-sensitive pads and the outer element and the  
3 touch sensors are of the capacitive type. They're formed by electrodes  
4 underneath the outer element.

5 By way of illustration, this embodiment of Claim 1 is shown in Figure 1 of the  
6 present application in which you see the touch-sensitive pads 16 on the crystal  
7 of the watch and the time data, that is the analog hands of the watch, are  
8 visible through the watch.

9 One important limitation that is not shown by the reference is the first control  
10 means for controlling movement of the cursor that is visible through the outer  
11 element. That is not shown in any of the references.

12 And the second limitation that is not shown in any of the references is the  
13 means for detecting speed of the user's finger over the outer element or the  
14 actuation frequency of successive sensors.

15 Now, there are references, the Ferrari reference, for example, that have sensors  
16 on screen. However, none of these sensors are placed so that time information  
17 is visible through them and none of them have means for detecting the speed  
18 of a user's fingers over the element.

19 JUDGE NAPPI: Doesn't Teres teach having the capacitive sensors over a  
20 time?

21 MR. SZIPL: Pardon me?

22 JUDGE NAPPI: Doesn't Teres teach capacitive sensors over a watch face?

23 MR. SZIPL: Teres?

24 JUDGE NAPPI: Teres.

25 MR. SZIPL: No, it doesn't. It doesn't show speed at all.

1 JUDGE NAPPI: I'm sorry. You said it doesn't teach having sensors where  
2 you can see a watch face. That is the question.

3 MR. SZIPL: That is true. It doesn't show that.

4 JUDGE NAPPI: It does not show that?

5 MR. SZIPL: It shows a sensor 10, for example, in Figure 1 that is apart from  
6 the analog information, and Teres also doesn't show means --

7 JUDGE NAPPI: Looking at Figure 2, isn't that showing of Teres -- isn't that  
8 Figure 2 and 3 not showing the capacitive sensors are overlaying the watch  
9 face?

10 MR. SZIPL: Figure 2 is a horizontal picture and I believe it is showing the  
11 actuation of the sensors that go around the bezel of the watch, which are  
12 outside of where the --

13 JUDGE NAPPI: And Figure 3 is showing outside the watch too?

14 MR. SZIPL: In part, yes.

15 JUDGE NAPPI: So where is the watch -- if I'm looking at Figure 3, where is  
16 the watch face?

17 MR. SZIPL: The watch face is in the center.

18 JUDGE NAPPI: Under S?

19 MR. SZIPL: Yes. And so -- but in any event, the means for detecting the  
20 speed of the user's finger is clearly not shown. Teres is directed to detecting  
21 only alphanumeric type of information on one of the pads and other kinds of  
22 information, and so there is no detecting the speed at all. There might be -- or  
23 detecting the frequency of successive sensors. That is simply not down.  
24 The advantage of that as shown in the present specification, for example, is  
25 that you can control the movement of the cursor on the screen, which is the  
26 ultimate purpose of this invention by connecting or by relating either

1 proportionally or otherwise or even logarithmically the movement of the  
2 sensor over the screen by using the speed at which the sensors are actuated on  
3 the face of the watch.

4 The advantage of that, for example, would be since you have -- if you look at  
5 my small demonstration here. If you look at the small surface of the watch, by  
6 changing the speed of actuation of the sensors, if that movement is  
7 logarithmically, for example, conveyed to the cursor, then a small movement  
8 along the crystal of the watch could create in one preferred embodiment, for  
9 example, a great deal of movement on the screen.

10 So neither of these references -- no references in any of the three references  
11 that are cited show the means for detecting the speed of the finger as recited in  
12 Claim 1.

13 I now turn the Board's attention to Claim 10, which represents a second  
14 embodiment, that has concentric centers, concentric rings of sensors. We  
15 discussed the pads being partially visible through the outer element. Let me  
16 focus on the second limitation that is not disclosed by the references. The  
17 direction of movement of the cursor being determined by orientage [sic] of the  
18 pads relative to the center of the concentric zones wherein the speed of the  
19 movement of the cursor depends on the concentric zone actuated or to adjacent  
20 concentric zones being actuated.

21 Just as the first -- just as Claim 1's limitation of a means for detecting speed,  
22 which is different from detecting position and is the most that is taught in any  
23 of these references, this claim goes further to say that the speed of movement  
24 of a cursor depends on which of a number of concentric zones are actuated or  
25 whether two zones are actuated simultaneously.

1 Again, the advantage of that allows you to freely control how the cursor on the  
2 screen is manipulated depending on the use of the manipulation of the sensors  
3 on the crystal of the watch, for example. So you can have, again, logarithmic  
4 differences in the speeds depending on where you're actuating the -- actuating  
5 the sensors on the crystal.

6 Another embodiment is in Claim 13. We talked about the display means  
7 visible through the touch-sensitive pads. Then we have a second control  
8 means for selecting an object shown on the screen or carrying out a command  
9 related to the object wherein the second control means are formed by a  
10 touch-sensitive sensor, performed by a capacitive sensor, and supported by the  
11 outer element and located in the central region.

12 So here in addition to these other sensors, we have a central sensor that  
13 controls the object on the machine and the cursor. The second means we  
14 contend is not disclosed in any of the references. While the second means --  
15 while the references may show a button, for example, for clicking on a mouse,  
16 this is not a capacitive center -- the capacitive sensor in the center of the screen  
17 as required by the claim.

18 JUDGE NAPPI: Coming back to Teres, doesn't Teres teach that in Figure 3?  
19 S is described as one of the electrodes. Isn't that a center electrode? Figure 3  
20 of Teres and I'm looking at the description in Column 2, about Line 43, 44.

21 MR. SZIPL: What that shows most is a -- it shows a center in the center of the  
22 screen, but it doesn't show one that performs a commanding -- a commanding  
23 function related to the cursor.

24 JUDGE NAPPI: What does it teach a commanding function for?

25 MR. SZIPL: Pardon me?

26 JUDGE NAPPI: What is it for then?



1 MR. SZIPL: It is for manipulating the cursor.

2 JUDGE NAPPI: Isn't manipulating the cursor a command?

3 MR. SZIPL: No. In a mouse, for example, you'd have to click the button to  
4 perform the command as required in this second function. That is not allowed  
5 in Teres.

6 JUDGE SAADAT: How is the command performed then?

7 MR. SZIPL: By a button clicking. Like a normal mouse would be on a  
8 computer.

9 So for example, what -- I'm sorry. Were you referring to Ferrari or Teres?

10 JUDGE NAPPI: Teres.

11 MR. SZIPL: Yes. No, I don't believe that is shown in Teres either in Figure 3.  
12 Moving on now to Claim 16, this further requires a pressure-sensitive control  
13 related to the outer element, which can be, for example, a watch crystal, and  
14 that element in addition to the speed limitations of the means are not shown in  
15 any of these references.

16 So again, there is no frequency of control by the means as required by the  
17 claim, and there is no pressure-sensitive control in addition to the other  
18 controls that are required to be controlled by the speed of the sensors.

19 So in summary, with respect to Claim 1, it is clear that none of the references  
20 show at least a means for deducting the speed of the user's finger over the  
21 outer element or actuation of successive sensors for determining speed. As I  
22 said, the advantage of determining speed rather than just position, which is  
23 shown in some of these references, is that that allows the cursor to be more  
24 accurately controlled.

25 With respect to Claim 10, although you might say that Teres discloses  
26 concentric devices, it does not disclose a means as required by Claim 10 which

1 requires that the movement of the cursor be relative to -- the speed of  
2 movement be relative to which of a concentric zone is actuated or whether two  
3 concentric zones are actuated.

4 With respect to Claim 13, again, there is no means for selecting the object that  
5 is in the central region of an outer element through which time information is  
6 visible as in -- as related in that second control means.

7 And the pressure-sensitive device that is required by Claim 16 as a control  
8 means in addition to all of the other elements is, again, not shown by any of  
9 the references. I've finished my argument.

10 JUDGE NAPPI: Thank you very much for your time.

11 Whereupon, the proceedings at 9:41 a.m. were concluded.  
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